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Classification and Analysis of
Interstate Commerce Commission
Cases Reported during the Period
between the Passage of the
Hepburn Act of 1906 and
the Mann-Elkins Act of 1910

Railway Administration

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COMMISSION CASES REPORTED DURING THE PERIOD
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1906 AND THE MANN-ELKINS ACT OF 1910

BY

TSONG LIN KU

Page 12 is missing

THESIS

FOR THE

DEGREE OF BACHELOR OF ARTS

IN

RAILWAY ADMINISTRATION

COLLEGE OF LIBERAL ARTS AND SCIENCES

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June 1 1914

THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

Isong Lin Ku

ENTITLED *Classification and Analysis of Interstate Commerce Commission Cases reported during the period between the passage of the Hepburn Act of 1906 and the Mann-Elkins Act of 1910.*

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF *Bachelor of Arts in Railway Administration*
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Instructor in Charge

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In

HEAD OF DEPARTMENT OF *Economics*



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INTRODUCTION

On the average about two hundred odd cases are decided and reported by the Interstate Commerce Commission every year, to say nothing of the hundreds of claims and complaints which are informally disposed of and not reported upon. The reported cases involve all kinds of railway matters from the least to the most important. As was said by Professor Meyer in 1910,¹ and it is still more true to say/ ^{today that} "There is hardly anything available at the present time, offering to the public a more varied, more widely distributed, and a more concrete and a better authenticated collection of facts relating to railways in the United States than the decisions of the Interstate Commerce Commission".

An attempt is made in this thesis to classify all the cases reported,² between the passage of the Hepburn and Mann-Elkins Acts, dated June 29, 1906, and June 18, 1910 respectively, according to the nature of the subject matters involved therein. As a result of this classification, the writer expects to gain some insight into the involved questions of reasonableness of railroad rates, and of the legality of various practices of the carriers, at the same time securing a bird's eye view of the intricate railway situation in the United States from both the legal and industrial angle.

A considerable length of time was consumed in gathering the Commission case sheets, putting them in order according to

¹ "Railway Legislation in the United States".

² Actually the first of the cases treated dates January, 1907, there being no cases reported during the later part of 1906.

pagination, and filing them under the index classification used by Commission in its Annual Reports. This preliminary step was necessary for our ultimate purpose of studying and analyzing the cases. It would have been scarcely possible to study and analyze this mass of confused facts without arranging them at first in a handy, working shape.

It may be well to mention here that the classification of the Commission's cases adopted herein is not altogether an innovation of the writer. Professor Hammond in his essay, first published in the Quarterly Journal of Economics in 1910 and reprinted in book form in 1911, under the title of "Railway Rate Theories of the Interstate Commerce Commission", made a survey of a large number of cases decided between 1887, the first^{year} of the Commission, and 1906, the year of the passage of the Hepburn Amendment. As the title of his essay indicates, the work of Professor Hammond was, however, confined to those cases which apparently involved the principles of rate making; while the classification^{of the writer} comprises all cases reported by the Commission during the subsequent period of about four years.

In commencing the work of classification, the writer separated the cases into as many classes as there were matters involved. The index to points decided by the Commission given in the annual reports was made the basis of this preliminary grouping. When all the cases, numbering about 800 altogether, were classified and filed under their proper headings, they were reclassified by consolidating together those cases which involved matters of kindred nature into a larger class, the constituent classes being

entered as sub-classes. Gradually, this grouping was reduced down to the shape in which it now appears in this thesis.

After the final classification^{was completed}/a more detailed study of the cases was made for the purpose of ascertaining the general attitude of the Commission by a review of the decisions. This review was necessarily somewhat cursory in nature as the greater part of time of the writer was consumed in evolving a type of classification that would logically and satisfactorily take care of the various points in controversy.

CHAPTER I
CLASSIFICATION

I

Factors determining the reasonableness of rate.

1. Distance
 - a. Differentials
 - b. Export rates
 - c. Import rates
 - d. Group rates and advantage of location
 - e. Long and short haul section and competition.
2. Cost of Service
 - a. Marine insurance
 - b. Profit or earning
 - c. Released rates
 - d. Weight
3. Value
 - a. Of service
 - b. Of commodity

II

Services and Privileges

- A. To Shippers:
 1. Compression in transit
 2. Feeding in transit
 3. Milling in transit
 4. Stoppage in transit
 5. Lightering

6. Track - Storage
7. Unloading cars
8. Telegraph service
9. Reconsignment privilege

B. To Passengers :

1. Free passes
2. Party rates

III

Improper Practices of Carriers

1. Extra allowances
2. Embargoes
3. Rebate
4. Under charges
5. Misstatement of agent
6. Pooling of freight

IV

Equipment of Facilities

1. Car supplies
2. Car shortage
3. Elevation
4. Stations
5. Terminal
6. Switches

V

Interline Relations

1. Combination rate
2. Joint rates
3. Propotioned rates
4. Division of rates

VI

Jurisdiction of Commission

1. Jurisdiction over Alaska
2. State railroad commission
3. Tap line
4. Terminal company
5. Regulation of services of carriers
6. Establishment of stations
7. Fixing basis for division of rates

Note

The above classification is a result of repeated refining. The writer has already briefly referred to in the introduction the method used in constructing the classification. Each general heading as appeared in the classification will be given a chapter in the subsequent part of the thesis, beginning with a statement of its general feature, then followed by a more detailed discussion of each of the subheadings by occasional quoting of actual cases for the purpose of illustration. The same treatment prevails throughout the thesis.

CHAPTER II

Factors determining the reasonableness of rates.

The complicated situation of railroads in the United States makes the rate problem an exceedingly difficult one. As a public calling, the railroads are not in a position to charge rates "what the traffic will bear"; and on the other hand, railroads are private enterprises, and have to charge rates so as to yield enough profit to make the business worthy of investment. Public exaggerates the one, and railroads, the other. The question "What is a reasonable rate" must then be decided by neither of the body, but by a body disinterested and unbiased in, and at the same time, conversant with the question. For this very demand, the Interstate Commerce Commission was instituted in 1887, and its power over rates was enlarged by the Act of 1906. and again of 1910.

In passing judgements upon the reasonableness of rates, the Commission was, however, rather at a loss at the beginning to find a proper basis for it. Through ^{years} experience and hardships the Commission has gradually formed a pretty definite idea as to what constitutes a reasonable rate. In reading over various types of rate cases, it has been found out that the Commission in adjudicating the reasonableness of rates never failed to refer to some of the most important factors in rate making, namely, (1) distance, (2) cost of service, and (3) value of service or commodity. So it is well for us to take up each of the factors and discuss them in the light of their reflections upon the

reasonableness of a rate.

(1) Distance

The Commission scarcely took the distance as a sole controlling element in determining what is a reasonable rate. In the case of *Kansas City Transportation Bureau of Commercial Club v. Atchison, Topeka & Santa Fe Railway Company et al*¹, said the Commission, "Adoption of distance alone as a measure of the rates from points of origin to the primary market would be destructive of competition in most of that territory", and the Commission in the said case accordingly refused to take distance as a measuring instrument. Again, said the Commission, in the case of *Receiver and Shippers Association of Cincinnati v. Cincinnati, New Orleans & Texas Pacific Railway Co.*, "Distance is only to be taken as a standard when no other factors entered". The question of distance as a factor in determining the reasonableness of rates² can be made clearer by studying the decisions on matters of (a) differentials, (b) export rates, (c) import rates, (d) group rates and advantage of location, and (e) "long and short haul" section and competition.

(a) Differentials -A differential bears absolutely no direct proportion to distance, in fact it bears roughly a reversed proportion to it. In the case of *P. P. William Co. v. Vicksburg Shreveport & Pacific Railway Co.*,¹ the Commission mentioned that "differentials diminish with increasing distance and vanish

¹ 16 I.C.C. Rep. 195. ² See Classification Chapter I.
³ 16 I.C.C. Rep. 482.

when the mileage on which they are based becomes inconsiderable in proportion to the total mileage from basing point to destination." In general, differentials are justified more on basis of industrial conditions and competitions, than the element of distance, though the latter never fails to play a part in charging a differential.

(b) Export rates.- That an export rate should be lower than domestic rates on shipments to same points even for a longer distance seemed to have been well recognized by the Commission. In the case of Minneapolis Threshing Machine Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.,¹ it was decided that a rate of 37 1/2 cents per 100 pounds found to be reasonable for the transportation of agricultural implements, in car loads, from Minneapolis, to New York, when for export; but might not be reasonable when for domestic. The Commission, however, insisted upon the extension of an export rate to all shipments for export, and making carriers under proper regulations be certain that the traffic which obtained the lower rate was actually exported; that is to say, instead of questioning the reasonableness of a lower export rate, the Commission demanded the parity of its application.

(c) Import rates.- The same recognition made in export rates was made in import rates by the Commission. Unjust discrimination in rates against domestic shipments of plate glass in favor of shipments was alleged in the case of Pittsburg Plate

¹ 16 I.C.C. Rep. 193.

Glass Company v. Pittsburg, Cincinnati, Chicago, & St. Louis Railway Company,¹ on the ground that rates on the former were relatively higher than the inland rail proportion of the total charge from the port of origin in a foreign country. While the Commission sustained the allegation on some other grounds, it did^{not} fail to say that the circumstances and conditions in domestic import shipments were different, and to charge a lower rate on the part of defendant to meet the circumstances and conditions not of their own creation, and which was reasonably necessary for their purpose, did not necessarily form an unjust discrimination.

(d) Group rates and advantage of location.- The justification of group rates largely depends upon facts and conditions in a particular case. In the case of Nebraska State Railway Co. v. Union Pacific Railroad Co.,² the Commission held that in spite of the existence of competition for the purchase of coal between Nebraska communities and communities in Wyoming and Utah, no justification existed for the maintenance of a blanket-rate on coal to all points on defendants' line in Nebraska. In the case of Nobles Brothers Grocery Co. et al. v. Fort-Worth & Denver City Railway Co. et al.,³ complaint was directed to the claim that Amarillo, Texas, should enjoy the same rate with the other Texas common points; the Commission held that Amarillo situated 124 miles North and West of Quanah, the last common point station of the defendant, did not properly fall within the

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13 I.C.C. Rep. 87. ² 13 I.C.C. Rept. 349.

⁴ 12 I.C.C. Rep. 242.

competitive line, and the complainants' contention should not be sustained. In many instances it is, however, well shown that the Commission did recognize the justification and the advantage of group rates. Thus in the case of Chicago Lumber & Coal Co. v. Tiago Southeastern Railway Co., said the Commission, "Blanket or group rates in many cases especially with reference to particular commodities are of great advantage to the public without injustice to any interest, though there is necessarily more or less disregard of distance and varying degrees of inequality!" With such an affirmative recognition, the Commission still did not fail to admit the existence of other conditions that made a group rate unreasonable. Emphasis was especially laid in connection with advantage of location. In the case of Corporation Commission of the State of North Carolina v. Norfolk & Western Railway Co.,¹ the Commission said, that it was not sufficient to justify the collection of unreasonable charges to any point simply because the defendant had constructed a system of rates on a blanket system. It went on to say that every city was entitled to the advantage of its location and might not lawfully be subjected to high freight charges merely because carriers for reasons of convenience or otherwise, included it in a number of other points in surrounding territory, which latter points were not similarly situated. From this decision it is clear that while the Commission did affirmatively take recognition of the justification of group rates, it did not allow them to go so far as to ignore other conditions such as the advantage

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19 I.C.C. Rep. 303

of location.

(e) "Long and Short section" and competition. - A great deal of discretion seemed to have been exercised by the Commission in relieving carriers from the violation of the "long and short haul" section of Commerce Act in the way of charging lower rates for a longer haul than for a shorter one on the pretence of the existence of competitions. In the case of Bovaird Supply Co.¹ v Atchison, Topeka & Santa Fe Railway Co., the general view of the Commission as to what constituted a relief under the "dissimilar conditions" phrase was clearly stated there. It was stated that the Commission viewed with disfavor the maintenance of a lower rate for a longer haul than for a short one, included within the longer, and the circumstance and conditions obtaining at the more distant point, which were relied upon to justify it, must not only be clearly shown to be substantially dissimilar from those prevailing at the nearer point; but also to clearly exercise a potent or controlling influence in making it lower rate. And it went on to say that if the influence of competition between points of production, in commodities, between carriers, and in rates prevailing at the further distant point, but not at the nearer one, controlled the establishment of a lower rate to the former, it would constitute such dissimilarity of circumstances as would justify the lower rate for the longer haul; but the competition in commodities alone, at the nearer point would not make circumstances there substantial-

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13 I. C. C. Rept. 56.

ly similar to those at the further point when the other competitive influences and conditions also prevail. "Still", it was asserted, "the dissimilar circumstances which justify under the long and short haul section a greater charge for a shorter than for a longer haul would also prevent such rate from constituting an illegal preference or advantage". In many other cases the same view was expressed; and relieves invoked were sustained or refused according to whether the facts of a case actually constituted a dissimilar condition as the Commission might have thought.

(2) Cost of Service

The Commissioners frequently rejected to take cost of service as a criterion for determining the reasonableness of rates. They objected, first, because it was extremely difficult, if not impossible, to ascertain the actual cost for handling a special shipment and for each commodity separately; and secondly because they believed that a method of apportionment as such, even be it certain, would naturally "restrict within very narrow limits the commerce in articles whose bulk was large as compared with their value." While the Commissioners objected to make cost of service a standard in measuring the reasonableness of rates, they, however, scarcely failed to refer it and discuss it, sometimes very elaborately in case of being so demanded, as to its effects upon the rate making. Thus in the case of New Albany Furniture Co.

v. Mobile, Jackson & Kansas City Railroad Co. et al.,¹ complaint

¹ 13 I.C.C. Report 594.

was made, against an advance in rates by the defendant; the Commission, in condemning the unreasonableness of the advance complained, mentioned as a ground of the judgment, that there was no evidence that the rates advanced were less than the "cost of service". And again in the case of *Mountain Ice Co. v. Delaware, Lackawanna & Western Railroad Co.*,¹ it was alleged that defendants' rates on natural ice from points of harvest in New Jersey and Pennsylvania to various consuming interstate destinations were excessive. The question of cost of service of these was duly considered and discussed. The Commission admitted in this case, that it would be no reason for requiring defendants to perform a service, that is, the transportation of ice here, for a sum which would not fairly compensate them; but the rates here were excessive even when the cost of service was taken into account. In the case of *Wilham H. Anthony v. Philadelphia & Reading Railway Co. et al.*,² a more definite statement in connection with the cost of service was found in the opinion of the case. It was asserted that the difference in the risk and cost of handling of two different commodities ordinarily resulted in a substantial difference in the rates. For a further study of the question of cost of service as a factor in determining the reasonableness of rates, cases³ involving the matter of (a) marine insurance, (b) profit or earnings, (c) released rates, and (d) weight, will be briefly treated in turn.

(a) Marine insurance.- The Commission did not allow carriers to charge higher rates for the service of marine insurance.

¹ 15 I.C.C. Report 305. ² 14 I.C.C. Report 581.

³ Classification, Chapter I.

unless they really took up all the responsibilities of an insurer. In the case of Wyman, Portridge & Co. et al. v. Boston & Marine Railroad Co. et al., ¹ the defendants advanced their rates from eastern points to Chicago and Minneapolis, 3 cents for 100 pounds on first class and 1 1/2 cents on Rule 25, etc, and these new rates included the cost of marine insurance. It was held that the advanced rates were unreasonable and should be reduced because of the inclusion of cost of marine insurance, unless the carriers were definitely made responsible for any loss that any regular insurer would be responsible for. Same view was held in a case ² between same parties in a later date.

(b) Profit or earning.- Question of profit or earning, which is so closely related to the cost, is sometimes made a ground by the Commission, against or in favor of carriers as the case may be, in the inquiry of the reasonableness of rates. In the case of the Johnson & Lariner Dry Goods Co. v. Atchison, Topeka, Santa Fe Railway Co., it was held that a rate from Texas producing points to Wichita of 50 cents per 100 pounds would already be highly profitable to the carrier and the complained rates of 96 cents to Wichita was therefore unreasonable. This decision of the Commission was, however, failed to make a proof of the statement, by investigations or otherwise, that the 50 cent rate would be highly profitable. This was in fact nothing more than a surmise. Another somewhat same opinionate-

¹² 13 I.C.C. Report 268. 15 I.C.C. Report 577

statement in connection with profit was made in the case of Detroit Chemical Works v. Northern Central Railway Co., that a long maintained rate was presumably profitable to the carriers, and any increase of it was therefore unreasonable.

(c) Released rates.- The matter of released rate is none the less a matter of risk, and ultimately, of cost. The validity of a lower rate for releasing special risk of loss and a higher rate for assuming it seemed to have been pretty well recognized by the Commission. This matter was thoroughly investigated, and definitely stated in re released rates.¹ It was concluded that if a rate was conditioned upon the shipper assuming the risk of loss due to causes beyond the carriers' control, the condition was valid; but if conditioned upon shippers' assuming the entire risk of loss, the condition was then void as against loss due to the carriers' negligence or other conduct.

(d) Weight.- The Commission has recognized the rights of carriers in order to facilitate the movement of business and to secure economy of handling the traffic, to fix the weight of goods to be transported and assess charges accordingly; and also the right to prescribe carload minimum weight for different commodities. But the rules of assessing charges by carrier on weight of commodities, and minimum weights to different places had to be subjected to the judgment of the Commission. In the case of Topeka Banana Dealer Association et al. v. St. Louis & San-Francisco Railroad Co. et al.,² it was decided that the defendants' rule of assessing charges on the weight of bananas at point

1 13 I.C.C. Report 550. 2 13 I.C.C. Report 620.

of origin instead of in the weight of the fruit at destination was not unjust and unreasonable, and further held that the fixing of minimum weight at 20,000 pounds on shipments of bananas from New Orleans to points west of Mississippi River, while assessing a minimum weight of 18,000 pounds to Chicago & points east of the river, did not result in undue discrimination; as it appeared that such difference in minimum was made to meet competition through Baltimore, though the cost of hauling to these different points might be the same.

(3) Value

The term "value" used here includes both value of service and value of commodity.¹ They are distinctly two different matters. The value of service to the shipper was defined from the beginning by the Commission as the ability to reach a market and to make his commodity a subject of commerce, or in a more specific way of saying, the ability to reach a market at a profit; while the value of commodity is the intrinsic value of the article itself. Distinct as they are, they are nevertheless very much shaded in each other. The value of commodity is always one of the most important elements in determining the value of service, and even sometimes their identities are hard to recognize. As value of commodity is more or less a concrete matter, and as the value of service cannot be exactly measured by any better standard than the value of commodity, though it was emphasized by the Commission that the value of commodity was

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Classification, Chapter I.

not the only consideration which entered into the value of service, consequently the commission has referred more often to value of commodity than to value of service in determining the reasonableness of rates.

In the result of investigation of released matters¹ there was concluded that a carrier might lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to the value. In many cases a rate was declared reasonable or unreasonable by comparing the rate of one commodity with that of another, which is of different value with the other. It was said in the case of Chicago Lumber & Coal Company v Tioga Southwestern Railway Co., that the movement of traffic was encouraged and increased when carriers adjusted their rates to mercantile interests, but they were not obliged and also not allowed in adjusting their rates to equalize the value of commodities in their final destination. In the case of Lang Brewing Co. v Chicago, Burlington & Quincy R.R. Co.² it was decided that an exaction of second class rate of \$1.45 per 100 pounds on wooden bungs, l.c.l. found to be unreasonable to the extent that it had exceeded fourth class rate of 92 cents on articles of similar character and greater value. Again in the case of Elemner & Thomas v Chicago, St. Paul, Minneapolis & Omaha Ry. Co.³ a reparation was allowed on account of certain shipments of stock-cattle which had moved at the beef cattle rate, because

¹ 13 I.C.C. Report 550.

² 18 I.C.C. Report 337

³ 14 I.C.C. Report 525

the value of the two commodities are not of the same. The rates of 27 cents, O.L. & 45 cents l.c.l. in walnut veneer from Kansas City to Chicago were pronounced excessive in the case of Penrod Walnut & Veneer Company v Chicago, Burlington & Quincy R.R.Co. simply on the consideration of the value of the article.

From the fact that in so many cases, rates were decided reasonable or otherwise according to the value of commodity, it might be well to infer that the value of commodity was accepted by the commission as a better criterion in measuring the reasonableness of rates.

CHAPTER III

Services and Privileges

We have discussed service relative to its cost in the last chapter of its effects upon the general rate-making. The services to be discussed in this chapter are more or less of special character, and, in general, do not reflect upon the general rate-making but only give rise to additional charges, if any. Privileges here are meant those special arrangements made either formally or informally between the carriers and shippers which are usually detrimental to the carrier and invariably beneficial to the shipper on account of the existence of some special conditions justifying the carrier's sacrifice. These privileges are usually accorded by carriers as a matter of advertising, especially true of those privileges to passengers. As these services and privileges are prone to be abused, so as to give rise to undue discriminations, it will be the work of this chapter to study their legality in the eyes of the Commission. Various kinds of services and privileges will be studied in the order of the classification¹. First, we come to a number of services and privileges^{accorded} to shippers, that is, in connection with freight. They are as follows: (1) Compression in transit, (2) Feeding in transit, (3) Milling in transit, (4) Stoppage in transit, (5) Lightering, (6) Track-Storage, (7) Unloading cars, (8) Telegraph service, (9) Reconsignment privilege.

(1) Compression in transit.- The Commission did not inter-

¹ Chapter I.

fere with the carriers' policy of allowing compression in transit to their shippers, but did insist upon the parity of the allowance. In the case of Muskogee Commercial Club et al v Missouri, Kansas & Texas Ry. Co.,¹ it was stated that when a railroad company declared policy which allowed compression of cotton in transit at the nearest point, it could not vary that rule so as to give certain shippers the opportunity to avoid it and thereby receive an advantage which was not given to shippers generally.

(2) Feeding in transit.- With respect to feeding-in-transit privilege, the Commission had prescribed its lawful charge and ordered the common carriers to be in conformity with the prescription. During the four years only one case complained the violation of the Commission's order; and the feeding-in-transit tariff of the charged carrier ordered to be corrected.

(3) Milling in transit.- As in the case of compression in transit, the Commission did not condemn the milling-in-transit privilege at all, but impose some definite duties to both carriers and shippers as well, and require the carrier and shipper to collect and pay as what it was published in the tariff. In re transit,² it was definitely concluded that the Commission did not condemn the transit privileges, but held that the responsibility for safeguarding and policing the transit privileges, to the end that the lawfully published rate should be collected, rested entirely upon carriers; and that shippers, however, would not be excused in any case when they defeated published rates by any abuse of transit privileges. It was asserted as

¹ 12 I.C.C. Report 312.

² 18 I.C.C. Report 280.

a dictum that "the duty of shippers to pay published rates is precisely the same as the duty of collecting such rates." This was sought to place the liability of discrimination not only to carriers but to shippers as well.

(3) Stoppage in transit.- A reasonable charge for an incidental service to stoppage in transit is usually allowable, and the legality of allowing stoppage in transit, as in other kinds of transit, has never been questioned. In the case of Indianapolis Freight Bureau v Cleveland, Cincinnati, Chicago & St. Louis Ry.Co.¹ the defendants had issued tariffs allowing stoppage in transit at Indianapolis for fabrication of structural iron, and charge of 1 1/2 cents per pound, to be made for the incidental service; and this tariff complained of was held by the Commission was without injustice.

(5) Lighterage.- During the four years considered only one case involved this matter of lighterage was well represented in the case of Barrett Manufacturing Company v Central R.R. Company of New Jersey.² The Commission in that case denied the complainant's demand for reparation for lightering its own merchandise across New York Harbor because (1) there was no tariff rule then in effect authorizing allowances to shippers for lightering their own shipment, and (2) the mere fact that the defendant could not lighter the shipments as promptly as the special exigencies for the complainant's business required gave the complainant no right to do the service itself and then demand

¹11 I.C.C. Report 370.
²17 " " 464

compensation for it. This decision, though did not show us the possible legal charge for lightering service, if done by carrier, in fact, this was not so called for by the case, did give us the inference that the Commission would require the carrier to do the lightering service for shippers, even in case of being so needed.

(6) Track-storage. The privilege of track storage has very often been abused that Prof. Johnson considered the abuse of the use of track-storage as one of the factors in causing the terrible car famine of 1906 and 1907. The Commission, while it took no definite steps against the track-storage privilege, did discourage shippers from indulging in the use of it. In the case of Wilson Produce Company v Pennsylvania R. R. Co., the Commission sustained the legality of defendants' tariff charging a rather large sum for track storage after the expiration of 48 hours' free time, by saying that the law did not require a carrier to give its cars and tracks under any terms for use as warehouses or places of business, and that a carrier, after allowing a reasonable time for unloading cars, might impose such charges for further detention as would lead to the speedy release of its equipment.

(7) Loading and Unloading Cars.- The service of loading and unloading cars both in carload and package shipments are usually done by shippers themselves. Whenever carriers give assistance to loading and unloading cars, in case of being so desired, carriers reserve the right to charge what it costs. Such attitude was taken by the Commission. In the case of Shultz-Hansen Co. v

Southern Pacific Co.,¹ it was declared that it was not unlawful for carriers to assess a reasonable charge for loading or unloading, or for assisting in loading or unloading car load freight; and further, that the carrier must have the right to unload carload shipments and release its equipment when consignee had neglected to unload within the free time provided in carrier's tariff, and that carrier might not be required to perform that service without reasonable compensation therefor. In the case of Wholesale Fruit & Produce Association v Atchison, Topeka, & Santa Fe Railway Co.,² the complainant asked the Commission for an order to compel carriers at Chicago to furnish assistance in unloading shipments in packages; and the Commission denied to comply by declaring that there was no good reason why ordinary package freight, which was loaded and unloaded upon the team track, should not be handled into and out of the car by shipper in the same manner that bulk freight was; and further that it appeared in many instances these fruits and vegetables were allowed to remain in the car for a considerable time after its arrival, and were delivered by the consignee from the car itself to the purchaser; now if the order as asked was issued, it would impose a hardship upon the carrier to require it to furnish help for the unloading of the car at whatever time the shipper might require such services. From these two decisions it is well to infer that a charge for loading and unloading cars by carriers are legal so long as it is not excessive, and that such service is not obligatory unless so provided in contracts.

¹ 18 I.C.C. Report, 234

² 17 I.C.C. Report 596.

(8) Telegraph Service. - There is no reason to give free telegraph service by carrier to shipper for the transaction of business which belongs to the latter. It was said by the Commission in the case of Kehoe & Co. v Nashville, Chattanooga & St. Louis Ry. Co. et al,¹ that the Commission would not impose on carrier duty of telegraphing to consignor in the event that shipment was refused by consignee or latter could not be found.

(9) Reconsignment Privilege.- The reconsignment privilege like other privileges is purely a matter of carrier's policy, its legality has never been questioned. The question often coming up to the Commission was not the legality of the privilege itself, but the legality of charges for the privilege. In the case of Beckman Lumber Co. v St. Louis Southwestern Ry. Co. et al² complainant questioned the legality of a reconsigning charge of \$5 per car as applied on four car loads of lumber from Thornton, Arkansas, originally consigned to East St. Louis, and diverted to Granite City, Illinois; the Commission held that the reconsigning charge assessed on the shipments from Thornton, Ark. was made in accordance with the published tariffs, and no evidence having been adduced to show that such charge was of itself unreasonable. In carrier's tariffs the period for the extension of this privilege is often provided. After the expiration of the periods provided, no longer will this privilege be extended, but a regular charge is made for any further consignment. An extension of the privilege after the expiration of the period was not

¹ 14 I.C.C. Report 555.

² 14 I.C.C. Report 552.

allowed and considered discriminatory by the Commission. Such was declared by the Commission in the case of Sunnyside Coal Mining Co. v Denver & Rio Grande R.R. Co.¹

So much was for the services and privileges in connection with freight; now we come to consider some of the privileges accorded to the passengers. There are only two privileges, namely, (1) free passes, (2) party rates.

(1) Free passes.- Classes of persons that are given free passes are expressly enumerated in the congress statute. To allow free passes to persons other than enumerated is, under whatever conditions, considered illegal by the Commission. In re railroad-telegraph contracts,² the Commission affirmatively declared that a railroad company or system of roads could not lawfully contract, in consideration of free telegraph service over wires beyond its own right of way, to furnish free passes to the officials, employees, laborers, of a telegraph company concerned. Again in re the free transportation of newspaper employees on special newspaper trains,³ the Commission said that when the Congress has expressly enumerated special classes of persons that might be exempted from the operation of general provisions in a law, this Commission could not enlarge the exempted classes by mere construction and include in them persons not thus expressly named in the statute itself.

(2) Party rates. In the matter of party rate tickets⁴ it was concluded by the Commission that party rate tickets could not be limited to particular classes of persons, but must be open to the general public.

¹16 I.C.C. report 558.

³12 I.C.C. Report 15

² 12 I.C.C. Report 10

⁴ 12 " 95

CHAPTER IV

Improper Practices of Carriers

As we have seen that practically all the special services and privileges discussed in the last chapter are accepted in most cases as lawful. We now come to discuss something which are prima facie illegal, that is, the improper practices of carriers. Such practices prevailed in railroad today are comparatively much less in number and still less in vogue, because of the strict regulation of the government and vigilant supervision of the public. But still there survived not a few of them. From the Commission's cases we have found complaints against all kinds of improper or unfair practices of carriers, the more important of which are: (1) extra-allowances, (2) embargoes, (3) rebates, (4) undercharges, (5) misstatement of agent, (6) pooling of traffic.

(1) Extra-allowances.- These extra-allowances include the deviation from published tariff, rendering services to some particular shippers without charge, and undue return for some shippers' service and so forth. Such are all considered illegal by the Commission. In the case of LaSalle & Bureau County Railroad Co. v Chicago & Northwestern Railway Co.¹ it was adjudged that when rates were filed and published, carriers must abide thereby, and that no allowance of any kind not specified in tariffs could lawfully be paid. As charges for all kinds of service discussed in last chapter are in most cases published in carrier's

¹ 13 I.C.C.Report 610

tariffs, in fact required to be published, by the Commission, the practice of rendering services to shippers without charge would be illegal too, just by inference to the decision just quoted. In regard to undue return for shippers service an illustration of its being illegal could be found in the case of Traffic Bureau Merchants Exchange of St. Louis v Chicago, Burlington & Quincy R.R. Co. et al.¹ It was decided there that the payment of an elevation allowance of 1 cent per 100 pounds to an elevator, who himself was a shipper was undue and therefore illegal.

(2) Embargoes.- An embargo against one commodity in a time of congestion is usually not illegal, but an embargo refuses transportation facilities to some establishments while according such facilities to their competitors is evidently discriminatory. So was in the case of Rogers & Co. v Philadelphia & Reading Railway Company,² and the embargo was condemned illegal.

(3) Rebates.- The practice of rebating had been seriously condemned by the public from the public. "What constitutes a rebate", used to be decided by court and now by Commission. A rebate under whatever guise is always illegal. In re allowances to elevators by the Union Pacific R. R. Company,³ the Commission declared that an allowance made to a shipper who furnished elevator service under an arrangement with a carrier is a rebate and therefore unlawful.

(4) Undercharges.- An undercharge may be made either thru mistake or by intention. In former cases a carrier is innocent has to suffer the loss of difference for his own fault, and in

1	14	I.C.C. Report	317.
2	12	"	308
3	12	"	85

the latter it is a form of rebate and liable for illegality. During the period of four years no case has come up for complaining an undercharge in the latter form; and only once did the commission criticize an ambiguous and indefinite tariff, which led to an undercharge complained of in the case of Old Dominion Smelting Co. v Pennsylvania Railroad Co.¹ As to the undercharge through mere mistake of carrier's agent, the Commission rather took an indifferent view. In the case of Falls & Co. v Chicago Rock Island & Pacific Railway Co.² the Commission said that the Commission was without authority to enter an order requiring a shipper to make good an undercharge, but shippers must understand their liability under law for the failure or refusal to pay the published rates.

(5) Misstatement of Agent. - Looking from the face, a misstatement of agent is certainly a blunder that a carrier has to be liable for, in case some injury done to a shipper as a result of the misstatement; but curious enough the Commission took a different view. In the case of Ohio Iron & Metal Co. v Wabash R. R. Co.³ the Commission said that an erroneous statement of defendant's agent resulting in the shipment moving over the lines of defendants at a rate higher than in force via another route did not entitle the complainant to an award of reparation. This judgment really imposed upon a shipper the duty to look out for his own interest, instead of holding the carrier responsible for proper routing and other things of the kind.

1	17	I.C.C. Report	309
2	15	"	269
3	18	"	299

(6) Pooling of traffic. - The practice of pooling of freight has long been condemned with severity by the public from the beginning; and it is expressly prohibited in the fifth section of the Commerct Act. Its trace of survival could hardly be found today, but the shipping public has still the suspicion, and often times alleges the existence of such practices against carriers. The Commission, however, often found such allegations as mere presumption and even groundless, and so just dismissed it for lack of evidence. In the case of Commercial Club, Traffic Bureau, of Salt Lake City, Utah, v Atchison, Topeka & Sante Fe Railway Co.¹ complaint alleged that defendants pool traffic from the east to Utah points; the Commission dismissed the complaint for there was no record contained proof of that allegation.

CHAPTER V

Equipments and Facilities

Railroads, doing business of public transportation, are obliged to cater the public the full and equitable use of their equipment~~s~~, and facilities, for accommodations and movement of traffic. The failure to do so on the part of carriers is oftentimes condemned as improper unless it can be justified by conditions. On the other hand the railroads reserve the perfect right of assessing charges for the use of their equipments and facilities; but the charges must not be unreasonable or oppressive. The question of proper discharge of duty inherent to the railroad business and its right to fair compensation is within the jurisdiction of the Commission. The subject matters in connection with equipment, and facilities, to be studied in this chapter are as follows: (1) Car supplies, (2) Car shortage, (3) Elevation, (4) Stations, (5) Terminal, (6) Switches.

(1) Car supplies.- The question of car supplies is largely a question of distribution of cars which altogether is not an easy one. The methods of destributing cars are different in different railroads, and the basis upon which cars distributed has got to be different for different commodities. To pass a judgment on the propriety of such a varied subject is naturally to be hard, and the judgment is prone to be arbitrary. The matter of equitable distribution of cars, and of a basis for the distribution was somewhat discussed in the case of Hillsdale Coal & Coke Company v Pennsylvania Railroad Co.¹ The complainant there

¹19 I.C.C. Report 356.

contended that the physical ^{capacity}/of a coal mine alone should be a fair and sound basis for rating coal mines for car distribution; but the defendants added to the physical capacity of a coal mine its commercial capacity, tested by the shipments made from it during the preceding twelve months, and divided the number by two. The Commission in that case sustained the latter, by saying that the utmost obligation of a carrier under the law was to equip itself with sufficient cars to meet the requirements of a mine for actual equipment; and that it was no real concern to the carrier what were the physical possibilities of a mine in the way of daily output except as that factor might afford some measure of what its actual shipments would be. As to fair proportion of cars to shippers, the defendant in the same case contended that, so long as the petitioner received all the cars it was entitled to, it had no right to complain because other operators received an undue proportion of cars. To this contention the Commission answered that the law not only gave the shipper a right to a justly rotatable use of the facilities of an interstate carrier but the assurance also that no other shipper should fare ratably better at the hands of the carrier. Here the Commission not only required the carrier to give full use of its equipment as demanded but also prevented him from undue proportioning cars to shippers as it saw fit.

(2) Car shortage.- This is closely associated with car supplies. This subject has been elaborately discussed and thoroly investigated by the American Railway Association, and by the Commission as well. In re car shortage and other insufficient

transportation facilities,¹ the Commission discussed the matter and proposed remedies which for our present study, that is, from the legal point of view, are rather unconcerned; so they need not be reproduced in this place. In general the Commission would not consider the complaints for insufficient supply of cars during the time of car shortage so long the carriers had done their best to appropriate their cars at hand equally to the demanding shippers. The carriers' rule that in time of car shortage, cars would be furnished to the various shippers in proportion to the amount of cars demanded and actual cars at hand, and the so-called "crop-holding rule", were upheld by the Commission.

(3) Elevation.- In re allowances to elevators,² it was stated by the Commission that the law clearly recognized elevation as a facility which the carrier might provide, and this authorized the carrier to grant grain elevation at destination, subjected only to the restriction imposed by the act that elevation, like any other facility offered by the carrier to shipper, must be open to all on equal and reasonable terms. It was required by the Commission as to the elevation charges that a carrier when he saw fit to offer elevation facilities to his shipper, he must publish the charge for the same is tariff.

(4) Stations.- The obligation on the part of carrier to provide station facilities at a given point along the line of a railroad may arise under the terms of the charter of a company

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12 I.C.C. Report 561. ² 12 I.C.C. Report 85.

or may be imposed by statute, and some authority assert that the duty exists also at common law. The Commission, under the act to regulate commerce, may have the power to impose a carrier this obligation too; but the Commission has rather been very careful to exercise its power in this respect, unless conditions clearly has indicated that the interest of the general public in the locality involved are materially impaired by the lack of such facilities. Thus in the case of *Jones et al. v. St. Louis & San Francisco Railroad Co.*,¹ the complainant requested the Commission's order to compel the defendant to reestablish a station at a place demanded; the Commission refused to issue the order as pleaded because of lack of sufficient ground that the public interest had been seriously impaired. Same refusal on the same ground was again made by the Commission in the case of *Eddleman et al. v. Middleland Valley Railroad Co.*,² the condition required by the Commission for justifying an establishment of a new station is rather indefinite, because it is largely a matter of opinion as to how far a public interest impaired may constitute a condition that would justify the Commission to require a carrier to establish a new station as the public interest demanded this vagueness of condition only serves the Commission to evade or shrink from the exercise of its power questioned.

(5) Terminal.- In spite of the fact that in this country the terminal of a railroad may not be owned by the railroad itself but by some private terminal company, the terminal facilities

¹² 12 I. C. C. Report 144. 13 I. C. C. Report 103.

must open to the public use on equal terms as other facilities. It was declared by the Commission in the case of *Carl Eichenburg v. Southern Pacific Railway Co. et al.*,¹ that the Terminal Company was a part and parcel of the system engaged as a whole in the transportation of commerce, and that all the terminal facilities could not be exempted from the regulating authority of the Commission. In attempting to secure equal use of terminal facilities, the Commission, in the same case, prohibited the Terminal Company to make contracts with shippers for special use of the terminal facilities. "If the Terminal Company", said the Commission, may make a contract with a shipper of cotton-seed products and give him thereby certain privileges which it does not give to other shippers of the same commodities, it may also make similar contrasts with regard to cotton or other products. A sanction of this contract would in effect sanction a device to evade the law."

(6) Switches.- Switches are in the main loading and unloading facilities. It is a ruling of the Commission that switches, like other facilities, must be open to all shippers on equal terms. As to proper charges for the use of switches, and the requirements of switching facility to the shipping public, the opinion of the Commission was well expressed in the case of *Associated Jobbers of Los Angeles v. Atchison, Topeka & Santa Fe Railway Co.*,² and in the case of *Reiter, Curtic & Hill v. New York, Susquehanna & Western Railroad Company*,³ respectively.

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14 I.C.C. Report 250. ² 18 I.C.C. Report 310.

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19 I.C.C. Report 290.

In the former case, said the Commission, "A charge of \$2.50 per car exacted for delivering and receiving carload to and from industries located upon spurs and sidetracks within carriers' switching limits is unlawful, when such carload freight is moving incidently to a system-line haul; charge is not unlawful when such car load freight is moving incidently to a foreign haul" - an exactly same decision was rendered in the case of Pacific Coast Jobbers' & Manufacturers' Association v. Southern Pacific Co.¹ In the latter case, that is the Reiter case, the Commission said that unloading facilities that were ample to meet the general requirements of a commodity need not be enlarged by a carrier to meet the special requirements of a single shipper on a given occasion. In this connection it may be well to mentioned here that by section I of the amended act to regulate commerce the Commission is authorized to order the construction and maintenance upon reasonable terms of "a switch connection" with any lateral branch line of railroad or "private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same.

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18 I.C.C. Report 333.

CHAPTER VI

Interline relations

In this chapter we are not going to discuss all possible interline relations as the title might so suggest, but will confine ourselves only to such relations as would reflect the various kinds of through rates, not so much in the light of their reasonableness, as of the principles developed and rule fixed by the Commission for the making of such rates. The subject-matters to be discussed in this connection are as follows: (1) Combination rates, (2) Joint rates, (3) Proportional rates, and (4) Division of rates.

(1) Combination rates.- It has been a well established rule that a through rate must not be higher than the combination rates of two or more local rates. This rule has been so well established and stuck to by the Commission that even strong competitive situation could not be invoked for relief from the operation of the rule. The exact situation involved in the case of *Morgan v. Missouri, Kansas & Texas Railway Co. et al.*¹ There, the principal defendant established an especially low rate, because of competition, upon shipments from Crowder City, Indian Territory, to Kansas City; and the defendant's had established a through rate applicable to shipments from other points in Indian Territory to Kansas City, which shipments moved through Crowder City, complainants alleged that the combination rates from points of origin of such shipments to Crowder and thence to Kansas City were lower than the through rate from points in Indian Territory

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12 I.C.C. Report 525.

to Kansas City. Upon the facts presented and the allegation entered, the Commission concluded with a statement that a carrier might, because of commercial conditions or competition, establish at a given point an especially low rate, but whenever it was such as to the effect that, through the presence of this special rate an existed through rate was made higher than the combination of local rates; this rate must be illegal. Many decisions condemning a through rate were rendered by the Commission by applying the same rule referred to.

(2) Joint rates.- Joint rates are rates applicable to shipments over a through rate formed by an arrangement between connecting carriers. Joint through rates are usually lower than the sum of the locals between two points. "In general" said the Commission, in the case of Lanning-Harris Coal & Grain Co. v Missouri Pacific Railway Co. et al.,¹ "Joint through rates are lower than the sum of the locals between two points, and obviously there can very seldom by any transportation reason why such should not be the case".

The above quotation may make it clear as to what a joint rate should be, but does not bring out at all as to under what conditions could a joint rate be established. A hint to this latter point is found in a statement given by the Commission in the case of Cardiff Coal Co. v. Chicago, Milwaukee & St. Paul Railway Co.² It may be laid down", stated the Commission in that case, "as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it

¹ 13 I.C.C. Report 154. ² 13 I.C.C. Report 460.

moved and to have reasonable rates established for the movement, regardless of the fact the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets, and he has the right also to have the benefit of through routes and joint rates to such distant markets, if no through routes already exist".

(3) Proportional rates.- Proportional rates are rates which are maintained for a shipment from the junction point of a through route to a local point beyond the through route. The rates are so made as to be in proportion with the through rate instead of to be the same as the local rate. In no one case it was mentioned by the Commission as what a proportional rate should be, in fact it does not need to, because the name already suggests what it would be.

(4) Division of rates.- Owing to the existence of various kinds of through routes and through rates, it naturally gives rise to the question of division rates between connecting carriers. Division of rates is usually, but not invariably based upon mileage. In the case of *Star Grain & Lumber Co. et al. v Atchison, Topeka & Santa Fe Railway Co. et al.*,¹. "In fixing a division", said the Commission, "between carriers of joint rates, it is the duty of the Commission to take into consideration all the Circumstances, conditions, and equities fairly affecting their Several interests, and precludes the idea that the division must be adjusted on a mileage or any other fixed basis". Again in the case of *Birmingham Packing Co. v. Texas & Pacific Railway Co.*

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14 I.C.C. Report 364.

et al.,¹ it was held that upon the facts of the case, that considering the terminal charges of the receiving and the delivering lines and the ferry charges of the intermediate line, the rate should be divided upon a mileage basis; "but this conclusion", emphasized the Commission, "should not be taken as implying that all joint rates should necessarily be divided upon a mileage basis". From the above two somewhat similar decisions, it may be well to infer that the division of rates has to be based upon mileage if no extra-conditions existed.

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12 I.C.C. Report 500.

CHAPTER VII

Jurisdiction of Commission

The Jurisdiction of the Commission was comprehensive even before the passage of Act of 1910. Besides the jurisdiction expressly prescribed in the Commerce Act and the Amended Act of 1906, the Commission was gaining field of control through interpretation of the acts so, in order to have a comprehension idea of how wide the jurisdiction of the Commission was covered before the year 1910, it is not enough to refer only to the Acts, but also to consult with at the same time, the cases where the jurisdiction of the Commission questioned.

Under the heading of "Jurisdiction of the Commission" we are not going to enumerate all the possible matters that come within the jurisdiction of the Commission, by quoting the Acts or even reproducing them, but will only concern ourselves in this connection, such jurisdiction of the Commission as questioned in the cases coming up to the Commission and not expressly given in the Acts. The more important questions with reference to the jurisdiction are as follows: (1) Jurisdiction over Alaska, (2) State Railroad Commission, (3) Top Line, (4) Terminal Company, (5) Regulation of services of carriers, (6) Establishment of Station and (7) Fixing basis for division of rates.

(1) Jurisdiction over Alaska.- "The district of Alaska", said the Commission in re jurisdiction over rail and water carriers operating in Alaska,¹ "is not a territory of the United States in the sense in which that phrase is used in the Act to

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19 I.C.C. Report 81.

regulate commerce as amended and the Commission has therefore no authority or jurisdiction over carriers engaged in transportation of passengers or property within the district of Alaska".

(2) State Railroad Commission.- While State Commission has effective control over railroad matters within the state, but it has to give way before the Interstate Commerce Commission in dealing matters reflecting interstate traffic. "Upon general principles of ", declared the Commission in the case of *E. E. Saunders and T. E. Welles v. Southern Express Co.*,¹ the action of a State Commission in fixing rates on State traffic must be treated with all due respect, but the Commission has never felt itself bound to accept a State-made rate as a necessary measure of an interstate rate".

(3) Tap Line.- The so-called tap line is given cognizance in the Commerce Act, and therefore a common carrier under the jurisdiction of the Commission; but the Commission was rather particular in the interpretation as to what is a tap line. Thus is the case of *Star Grain & Lumber Co., v. Atchison, Topeka & Santa Fe Railway Co.*² "The mere interposition", said the Commission, "between a mill and a carrier of a paper railroad incorporation that calls itself a common carrier and complies with the act in those respects, but is owned by the mill or its proprietors, does not meet the requirement of the Commission of a so-called tap line".

(4) Terminal Company.- Terminal company in this country is always a separate entity itself, not itself engaged in transportation business; and therefore may not come under the juris-

¹ 18 I.C.C. Report 415. ² 7 I.C.C. Report 338.

diction of the Commission. The Commission, however, holds it does. Thus in the case of Salvoy Process Co. v. Delaware, Lackawanna & Western Railroad Co.,¹ the Commission declared that a Terminal Company was only part and parcel of the system engaged as a whole in the transportation, and to the extent such commerce is interstate, the Commission has jurisdiction to supervise and control it within statutory limits.

(5) Regulation of services of carriers.- It is not enumerated in the fifteenth section of Commerce Act all the services of carriers that may be regulated by the Commission. It has to be interpreted by the Commission as the cases coming up as to what are within the competence of the Commission to regulate. In the case of Rail & River Coal Co. v. Baltimore & Ohio Railroad Co.,² the Commission said that Section 15 of the Act was to be read in the widest possible sense; and that it brought with the jurisdiction of the Commission all the regulations and practices of carriers under which they offer their services to the shipping public and conduct their transportation. And so in the case of Wholesale Fruit & Produce Association v. Atchison, Topeka & Santa Fe Railway Co. et al.,³ the Commission declared that rules or regulations prescribing who shall load and unload cars of freight were rules or regulations affecting rates, and were, therefore subject to the control of Commission under the fifteenth section.

(6) Establishment of Stations.- The Commission refused to assume the power of ordering carriers to establish new stations

¹ 14 I.C.C. Report 246. ² 14 I.C.C. Report 86.

³ 14 I.C.C. Report 410.

as condition required. "The Commission", said the Commission, is not the proper forum to which to appeal for the enforcement either of a charter, or common law obligations which might impose carriers to establish new stations as conditions required".

(7) Division of rates.- As division of rates is something incidental to the establishment of through routes and joint rates, and as the Commission was authorized to establish through routes by the amended act, the power to fix basis for division of rates is clearly within the competence of the Commission. So was it asserted by the Commission in the case of Star Grain & Lumber Co. et al. v. Atchison, Topeka & Santa Fe Railway Co. et al.¹ "The fixing of a division", said the Commission is that case, "between carriers of joint rates ordered to be established, is the duty of the Commission as implied in the Section 15".

CONCLUSION

From such a general survey, however general as it is, as we just had, one may get a fair idea of what are some of the factors that play parts in rate making, and consequently the reasonableness of rates; and what are the practices and of carriers that are usually condemned by the Commission, and what are not; and also of how extensive is the jurisdiction of the Commission over railway matters. However, it is well to remind that conditions are changing as time goes on, and the opinion

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14 I.C.C. Report 364.

and policy of the Commission to certain particular matters might change also with the changing conditions; though some of the general and well established doctrines will still stand the waves of the time. All these cases coming up to the Commission are decided upon the facts and conditions of a particular case instead of upon a rigid, fixed rule. So was acknowledged by the Commission itself in the case of Kansas City Hay Dealers' Association v. Missouri Pacific Railway Co. et al.,¹ and in many other cases the Commission said, in that case, that the question of reasonableness and even of legality is always one of fact; and each case must stand upon its own record. Such an evading statement may annihilate the whole significance of this thesis; but the writer cannot help to state it as such, because it is a statement of facts too.





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